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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/612,769	CHE ET AL.	
	Examiner	Art Unit	
	DENNIS MYINT	2162	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 December 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4-6,13 and 16-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-2, 4-6, 13, and 16-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This communication is responsive to Applicant's Amendment, filed on December 21, 2007.

2. Claims 1-2, 4-6, 13, and 16-19 are currently pending in this application. Claims 1 and 13 are independent claims. In the Amendment filed on December 21, 2007, claims 1 and 13 were amended. **This office action is made final.**

Claim Objections

3. Claim 4 is objected to because of the following informalities: claim 4 in line 1 recites "the method of claim 3". Since claim 3 had been cancelled, there no antecedent basis for claim 4. "The method of claim 1" is respectfully suggested. Appropriate correction is required.

Specification

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required.

Claim 1 in line 26 recites **"the time of display for the first HTML based request and the time of display for the HTML based response"** *which are included in a second HTML based request* (lines 22-23 of claim 1). Claim 1 in lines 30-31 recite "the

time of display for the first HTML based request and the time of display for the HTML based response" which are stored in a database (line 32 of claim 1). Claim 13 in lines 24-25 recites "the time of display for the first HTML based request and the time of display for the HTML base response" which are included in a second HTML based request (lines 21-22 of claim 13). Claim 13 in lines 35-36 recites "the time of display of the first HTML based request and the time of display for the HTML based response" which are stored in a database (line 32 of claim 13).

However, the original specification on page 8 in paragraphs 0033 and 0034 (i.e., paragraphs 0030 and 0031 of the U.S. Patent Application Publication Number 20070185877 of the instant application) recite as follows:

"[0033] Web browser 104 displays response HTML page 107. A2 in FIG. 1 represents the time response HTML page 107 is delivered to web browser 104 for display. Thus, web browser 104 deposits the time response HTML page 107 is displayed into the hidden data fields of response **HTML page 107**.

[0034] When another request is sent to web server 108 **utilizing request HTML page 106**, the request generation time at web browser 104 and arrival times at web server 108 and application server 110 for the second request are deposited in the hidden data fields of request HTML page 106. When application server 110 receives the second request via request HTML page 106, the arrival times and the departure times from the previous request utilizing request HTML page 106 and response HTML page 107 are stored in database server 112. *Thus, the second request HTML page 106 includes arrival and departure times from a first round request (i.e., request and response) as well as arrival times from a second round request.* When the first round times are stored in database server 112, hidden data fields in the second request HTML page 106 are freed. Accordingly, there are adequate hidden data fields in the second response HTML page 107 since the first round times are stored in database server 112 rather than transferred to the hidden data fields in second response HTML page 107. In an embodiment, timing data from a previous round is stored in database server 112 each time request HTML page 106 is processed."

These two paragraphs clearly state that "HTML page 107" in paragraph [0033] and "HTML page 106" in paragraph [0034] **are not the same**. "The time of display for

the first HTML based request" as recited in lines 22-23 of claim 1 was deposited into "HTML page 107" as recited in paragraph [0033]. However, "the request HTML page 106" in paragraph [0034] (i.e., lines 15-16 on page 8 of the original specification) is a different HTML request page than the HTML request page 107 of paragraph [0033]. "The time of display for the first HTML based request" (as recited in line 26 of claim 1) was not deposited into the HTML request HTML page 106 of paragraph [0034].

As such, "the time of display for the first HTML based request and the time of display for the HTML based response" are **not included** in "a second HTML based request" as recited in line 22 of claim 1. Paragraph [0034] of the original specification (page 8) makes this fact even more clearer by reciting " *Thus, the second request HTML page 106 includes arrival and departure times from a first round request (i.e., request and response) as well as arrival times from a second round request"* (lines 21-24 of page 8 of the original specification, i.e., paragraph [0034]).

As such, the specification fails to provide proper antecedent basis for the claimed subject matter, that is, "the time of display for the first HTML based request and the time of display for the HTML based response " are included "a second HTML based request". Similarly the specification fails to provide proper antecedent basis for the claimed subject matter, that is, "a second HTML based request and the time of display for the HTML based response" are stored in a database.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1-2, 4-6, 13, and 16-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 1 in line 26 recites "the time of display for the first HTML based request and the time of display for the HTML based response" *which is included in the second HTML based request* (lines 22-23 of claim 1). Claim 1 in lines 30-31 recite "the time of display for the first HTML based request and the time of display for the HTML based response" which are stored in a database (line 32 of claim 1). Claim 13 in lines 24-25 recites "the time of display for the first HTML based request and the time of display for the HTML base response" which are included in a second HTML based request (lines 21-22 of claim 13). Claim 13 in lines 35-36 recites "the time of display of the first HTML based request and the time of display for the HTML based response" which are stored in a database (line 32 of claim 13).

However, the original specification on page 8 in paragraphs 0033 and 0034 (i.e., paragraphs 0030 and 0031 of the U.S. Patent Application Publication Number 20070185877 of the instant application) recite as follows:

"[0033] Web browser 104 displays response HTML page 107. A2 in FIG. 1 represents the time response HTML page 107 is delivered to web browser 104 for display. Thus, web browser 104 deposits the time response HTML page 107 is displayed into the hidden data fields of response **HTML page 107**.

[0034] When another request is sent to web server 108 **utilizing request HTML page 106**, the request generation time at web browser 104 and arrival times at web server 108 and application server 110 for the second request are deposited in the hidden data fields of request HTML page 106. When application server 110 receives the second request via request HTML page 106, the arrival times and the departure times from the previous request utilizing request HTML page 106 and response HTML page 107 are stored in database server 112. *Thus, the second request HTML page 106 includes arrival and departure times from a first round request (i.e., request and response) as well as arrival times from a second round request.* When the first round times are stored in database server 112, hidden data fields in the second request HTML page 106 are freed. Accordingly, there are adequate hidden data fields in the second response HTML page 107 since the first round times are stored in database server 112 rather than transferred to the hidden data fields in second response HTML page 107. In an embodiment, timing data from a previous round is stored in database server 112 each time request HTML page 106 is processed."

These two paragraphs clearly state that "HTML page 107" in paragraph [0033] and "HTML page 106" in paragraph [0034] **are not the same**. "The time of display for the first HTML based request" as recited in lines 22-23 of claim 1 was deposited into "HTML page 107" as recited in paragraph [0033]. However, "the request HTML page 106" in paragraph [0034] (i.e., lines 15-16 on page 8 of the original specification) is a different HTML page than the HTML page 107 of paragraph [0033]. "The time of display for the first HTML based request" (as recited in line 26 of claim 1) was not deposited into the HTML request HTML page of paragraph [00345].

As such, "the time of display for the first **HTML** based request and the time of display for the HTML based response" are **not included** in "the second HTML based request" as recited in line 22 of claim 1. Paragraph [0034] of the original specification (page 8) makes this fact even more clearer by reciting " *Thus, the second request HTML page 106 includes arrival and departure times from a first round request (i.e., request and response) as well as arrival times from a second round request"* (lines 21-24 of page 8 of the original specification, i.e., paragraph [0034]).

As such, the specification lacks enabling disclosure for ascertaining what "the time of display for the first HTML based request and the time of display for the HTML based response (in line 26 of claim 1) is intended to mean and claim 1 is rejected under 35 U.S.C. 112 first paragraph.

Similarly, the specification lacks enabling disclosure for ascertaining what "the time of display for the first HTML based request and the time of display for the HTML based response (in line 35-36 of claim 13) is intended to mean and claim 13 is rejected under 35 U.S.C. 112 first paragraph.

Claims 2 and 4-6 are also rejected under 35 U.S.C. 112 first paragraph because their dependency on claim 1.

Claims 16-19 are also rejected under 35 U.S.C. 112 first paragraph because their dependency on claim 13.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-2, 4-6, 13, and 16-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 in lines 21-32 recites "generating **a second HTML based request,** the second HTML based request including the times of generation of the first HTML based request and **the HTML based response**, **the arrival times of the first HTML based request and the HTML based response**, **the departure times of the first HTML based request and the HTML based response**, **the time of display for the first HTML based request,** and **the time of display for the HTML based response** in one or more hidden data fields associated with the second HTML based request; and

storing the times of generation of the first HTML based request and **the HTML based response**, **the arrival times of the first HTML based request and the HTML based response**, **the departure times of the first HTML based request and the HTML based response, the time of display for the first HTML based request**, and **the time of display for the HTML based response** in the hidden data fields in the HTML based response in a database within a request-response cycle corresponding to the second HTML based request".

As to the limitation "including the times of generation of the first HTML based request and **the HTML based response"** in lines 23-24 of claim 1, it is not ascertainable which server generates said "the HTML based response" because the claim in line 6 recites "forwarding the first HTML based request to *one or more servers"* and in line 16 recites "forwarding the HTML based response to one or more servers".

Figure 1 of the specification of the application describes three servers (Web Server 108, Application Server 110, and Database Server 112). As such, it is not ascertainable which server generates *the HTML based response* as recited in lines 23-24 of claim 1 and renders the claim indefinite.

On the same rationale, claim 1 in line24 recites "**the arrival times of the first HTML based request and the HTML based response".** However, it is not ascertainable **at which server** of "one or more servers" (as recited in line 6 and line 16 of claim 1) the first HTML based request in line 24 of claim 1 **arrives** and which server made "the HTML based response" as recited in line 24 of claim 1. As such, said limitation similarly renders the claim indefinite.

On the same rationale, claim 1 in lines 24-25 recites "**the departure times of the first HTML based request and the HTML based response".** However, it is not ascertainable from which server of "one or more servers" (as recited in line 6 and line 16 of claim 1) the first HTML based request in line 25 of claim 1 **departs** and which server made "the HTML based response" as recited in line 25 of claim 1. As such, said limitation similarly renders the claim indefinite.

On the same rationale, claim 1 in line 26 recites "the time of display for the HTML based response". However, it is not ascertainable which server of "one or more servers" (as recited in line 6 and line 16 of claim 1) **responded.** As such, said limitation similarly renders the claim indefinite.

On the same rationale, claim 1 in line 28-29 recites "the HTML based response". However, it is not ascertainable which server of "one or more servers" (as recited in line

6 and line 16 of claim 1) **responded.** As such, said limitation similarly renders the claim indefinite.

On the same rationale, claim 1 in line 29 recites "the arrival times of the first HTML based request and the HTML based response". However, it is not ascertainable at which server of "one or more servers" (as recited in line 6 and line 16 of claim 1) the first HTML based request arrived and it is not ascertainable which server made "the HTML based response". As such, said limitation similarly renders the claim indefinite.

On the same rationale, claim 1 in line 30 recites "the departure times of the first HTML based request and the HTML based response". However, it is not ascertainable from which server of "one or more servers" (as recited in line 6 and line 16 of claim 1) the first HTML based request departed and it is not ascertainable which server made "the HTML based response". As such, said limitation similarly renders the claim indefinite.

As such claim 1 is rejected under 35 U.S.C. 112 second paragraph for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 13 in lines 20-26 recites "wherein the browser is further operable to store a time of arrival and a time of display for the HTML based response, and generate a second HTML based request including the times of generation of the first HTML based request and **the HTML based response, the arrival times of the first HTML based request and the HTML based response, the departure times of the first HTML based request and the HTML based response**, the time of display for the first HTML

based request~ and the time of display for the HTML based response in one or more hidden data fields associated with the second HTML based request" and claim 13 in lines 32-37 recites "database for storing the times of generation of the first HTML based request and **the HTML based response, the arrival times of the first HTML based request and the HTML based response, the departure times of the first HTML based request and the HTML based response**, the time of display of the first HTML based request, and the time of display for the HTML based response within a request-response cycle corresponding to the second HTML based request."

As to the limitation "including the times of generation of the first HTML based request and **the HTML based response"** in lines 21-22 of claim 13, it is not ascertainable which server generates said "the HTML based response" because the claim in line 6 recites "at least one first server", the claim in line 10 recites "at least one second server", and the claim in line 16 recites "at least one third server". Figure 1 of the specification of the application describes three servers (Web Server 108, Application Server 110, and Database Server 112). As such, it is not ascertainable which server generates *the HTML based response* as recited in lines 21-22 of claim 13 and renders the claim indefinite.

On the same rationale, claim 13 in line 22-23 recites **"the arrival times of the first HTML based request and the HTML based response".** However, it is not ascertainable **at which server** (claim in line 6 recites "at least one first server", the claim in line 10 recites "at least one second server", and the claim in line 16 recites "at least one third server") the first HTML based request in line 22-23 of claim 13 **arrives**

and which server made "the HTML based response" as recited in line 22-23 of claim 13. As such, said limitation similarly renders the claim indefinite.

On the same rationale, claim 13 in lines 23-24 recites **"the departure times of the first HTML based request and the HTML based response".** However, it is not ascertainable from which server of "one or more servers" (claim in line 6 recites "at least one first server", the claim in line 10 recites "at least one second server", and the claim in line 16 recites "at least one third server") the first HTML based request in line 23-24 of claim 13 **departs** and which server made "the HTML based response" as recited in line 23-24 of claim 13. As such, said limitation similarly renders the claim indefinite.

As to the limitation "generation of the first HTML based request and **the HTML based response"** in lines 32-33 of claim 13, it is not ascertainable which server generates said "the HTML based response" because the claim in line 6 recites "at least one first server", the claim in line 10 recites "at least one second server", and the claim in line 16 recites "at least one third server". Figure 1 of the specification of the application describes three servers (Web Server 108, Application Server 110, and Database Server 112). As such, it is not ascertainable which server generates *the HTML based response* as recited in lines 32-33 of claim 13 and renders the claim indefinite.

On the same rationale, claim 13 in line 33-34 recites **"the arrival times of the first HTML based request and the HTML based response".** However, it is not ascertainable **at which server** (claim in line 6 recites "at least one first server", the claim in line 10 recites "at least one second server", and the claim in line 16 recites "at

least one third server") the first HTML based request in line 33-34 of claim 13 **arrives** and which server made "the HTML based response" as recited in line 33-34 of claim 13. As such, said limitation similarly renders the claim indefinite.

On the same rationale, claim 13 in lines 34-35 recites "**the departure times of the first HTML based request and the HTML based response".** However, it is not ascertainable from which server of "one or more servers" (claim in line 6 recites "at least one first server", the claim in line 10 recites "at least one second server", and the claim in line 16 recites "at least one third server") the first HTML based request in line 34-35 of claim 13 **departs** and which server made "the HTML based response" as recited in line 34-35 of claim 13. As such, said limitation similarly renders the claim indefinite.

As such claim 13 is rejected under 35 U.S.C. 112 second paragraph for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 2 and 4-6 are also rejected under 35 U.S.C. 112 second paragraph because their dependency on claim 1.

Claims 16-19 are also rejected under 35 U.S.C. 112 second paragraph because their dependency on claim 13.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 1, 5, 13, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barrick Jr. et al. (hereinafter "Barrick") (U.S. Patent Number 6625647) in view of Chen et al. (hereinafter "Chen") (U.S. Patent Number 5793976) and further in view of Dutta et al., (hereinafter "Dutta") (U.S. Patent Application Publication Number 2002/0161794).

Referring to claim 1, Barrick Jr. et al. is directed to a system and method for assembling timing data in a multi-layer server environment, comprising:

"generating a first HTML request" (Barrick, Column 4, Line 41-65, i.e., *When one of the user machines sends an HTTP GET request to Web server 104, Web server 104 responds to the request by sending an HTML page that contains a browser agent once the HTML page containing a browser agent is downloaded into a Web browser running on a user machine that supports JavaScript and HTML frames*);

"depositing a time of generation of the first HTML based request in one or more hidden data fields associated with the first HTML based request" " (Barrick, Column 9 Line 1-10 i.e., *FIG. 5 is a diagram of the fields contained in an* ***HTTP GET request*** *header that has been altered to transfer download timing information to a relay server. The download time interval measured by the browser agent is encoded as a DELTA field 502. In one embodiment, the* ***DELTA field*** *is an integer representing a number of milliseconds. The delta field is sent as a variable DELTA in the HTTP GET request header. Next, a group,of fields are defined that make up a page station identifier (PSI) 503;* Barrick Figure 5: *Delta Field 502,* and Barrick, Column 7, Line 43 through Column 8 Line 20, i.e., *In one embodiment,* ***the browser agent records the time of the sending of the HTTP GET request as the start time****. Upon receiving the HTTP GET request,* ***Web server 402 sends back the requested Web page in a step 440****. In a step 450, the browser agent calculates the download interval, encodes it in an HTTP GET request header, and sends the HTTP GET request to relay server 406. In one embodiment, the end of the download interval is marked using the on load function. In other embodiments, the browser agent calculates other performance parameters in addition to or in place of the download interval. For example, the time required for the*

server to send the first byte or to end transmission may be measured. ***It should also be noted that in some embodiments, the measurement and reporting functions are placed in a for loop so that the web browser repeatedly accesses a Web page, making repeated measurements and sending multiple reports to the relay server***);

"forwarding the HTML based request to one or more servers" (Barrick, Column 7 Lines 15-22, i.e., *FIG. 4A is a process flow diagram illustrating a process running on a Web server 402, a browser 404, and a relay server 406 for timing the downloading of a Web page. In a step 410, the user running browser 404 selects an HTML page that contains the browser agent. This results in the sending of an HTTP GET request to Web server 402 Web server 402 then sends back the requested HTML page containing the browser agent in a step 420;* Particularly note Figure 4A of Barrick) "(each deposit arrival time and a departure time) for the first HTML based request in one or more hidden data fields associated with the first HTML based request" (Barrick, Column 9 Line 1-10 i.e., *FIG. 5 is a diagram of the fields contained in an* ***HTTP GET request*** *header that has been altered to transfer download timing information to a relay server. The download time interval measured by the browser agent is encoded as a DELTA field 502. In one embodiment, the* ***DELTA field*** *is an integer representing a number of milliseconds. The delta field is sent as a variable DELTA in the HTTP GET request header. Next, a group,of fields are defined that make up a page station identifier (PSI) 503;* Barrick Figure 5: *Delta Field 502;* Barrick, Column 7, Line 43 through Column 8 Line 20, i.e., *In one embodiment,* ***the browser agent records the time of the sending of the HTTP GET request as the start time****. Upon receiving the HTTP GET request,*

Web server 402 sends back the requested Web page in a step 440. *In a step 450, the browser agent calculates the download interval, encodes it in an HTTP GET request header, and sends the HTTP GET request to relay server 406. In one embodiment, the end of the download interval is marked using the on load function. In other embodiments, the browser agent calculates other performance parameters in addition to or in place of the download interval. For example, the time required for the server to send the first byte or to end transmission may be measured.* ***It should also be noted that in some embodiments, the measurement and reporting functions are placed in a for loop so that the web browser repeatedly accesses a Web page, making repeated measurements and sending multiple reports to the relay server***);

"generating an HTML based response in response to receiving the first HTML based request" (Barrick, Column 7, Line 43 through Column 8 Line 20, i.e., *In one embodiment,* ***the browser agent records the time of the sending of the HTTP GET request as the start time***. *Upon receiving the HTTP GET request,* ***Web server 402 sends back the requested Web page in a step 440***. *In a step 450, the browser agent calculates the download interval, encodes it in an HTTP GET request header, and sends the HTTP GET request to relay server 406. In one embodiment, the end of the download interval is marked using the on load function. In other embodiments, the browser agent calculates other performance parameters in addition to or in place of the download interval. For example, the time required for the server to send the first byte or to end transmission may be measured.* ***It should also be noted that in some embodiments, the measurement and reporting functions are placed in a for loop***

so that the web browser repeatedly accesses a Web page, making repeated measurements and sending multiple reports to the relay server);

"transferring" and "forwarding" (Barrick, Column 7 Lines 56-66)

"receiving the HTML based response to a browser for displaying the HTML based response, the browser operable to store a time of arrival" (Barrick, Column 8 Lines 33-38, i.e., *By controlling the sending of the HTTP GET request for the desired HTML, page, the browser agent is able to record the time the request was send and monitor the receiving of the page to determine the download time*);

"generating a second HTML based request" (Barrick, Column 7, Line 43 through Column 8 Line 20, i.e., *It should also be noted that in some embodiments, the measurement and reporting functions are placed* ***in a for loop*** *so that the web browser* ***repeatedly accesses a Web page****, making repeated measurements and sending multiple reports to the relay server)* "the second HTML based request including times of generation of the first HTML based request and the HTML based response" (Barrick, Column 9 Line 1-10 i.e., *FIG. 5 is a diagram of the fields contained in an* ***HTTP GET request*** *header that has been altered to transfer download timing information to a relay server. The download time interval measured by the browser agent is encoded as a DELTA field 502. In one embodiment, the* ***DELTA field*** *is an integer representing a number of milliseconds. The delta field is sent as a variable DELTA in the HTTP GET request header. Next, a group,of fields are defined that make up a page station identifier (PSI) 503;* Barrick Figure 5: *Delta Field 502,* and Barrick, Column 7, Line 43 through Column 8 Line 20, i.e., *In one embodiment,* ***the browser agent records the time of***

the sending of the HTTP GET request as the start time*. Upon receiving the HTTP GET request,* ***Web server 402 sends back the requested Web page in a step 440***) "in one or more hidden data fields associated with the second HTML based request" (Barrick, Column 9 Line 1-10 i.e., *FIG. 5 is a diagram of the fields contained in an* ***HTTP GET request*** *header that has been altered to transfer download timing information to a relay server. The download time interval measured by the browser agent is encoded as a* ***DELTA field 502****. In one embodiment, the* ***DELTA field*** *is an integer representing a number of milliseconds.*) ; and

"*storing the times of generation of the first HTML based request and the HTML based response, , arrival times, departure times in the hidden fields in the HTML based response in a database within a request-response cycle corresponding to the second HTML based request*" (Barrick repeatedly teaches storing request-response results in his specification. In Column 1 Lines 35-44, Barrick recites *a network of special machines that are programmed to connect to different web sites as clients and* ***evaluate the performance of the connection****. The special machines that make up the network can then* ***store or report their connection results****;* Barrick Column 2 Lines 10-18, i.e., *The data is sent from the user to a relay server that preferably combines the performance data with geographical information relating to the user.* ***The data can then be combined with data obtained from other users and stored in a central database for processing****;* Barrick Column 11 Lines 1-6, i.e., *Download time, or any other performance parameter that is desired may be measured using an agent that monitors information as it is transmitted between parties. In one embodiment, the*

network is the Internet and the information is transmitted in the form of Web pages. Results are preferably sent to a relay server for formatting before being stored in a database server. In some embodiments, results are sent directly to a database server; also note Column 5 Line 1-10 and Column 10 Line 52-58 of Barrick reference; in addition, Barrick teaches the storing of the arrival times and departure times in the hidden data fields in the second HTML based response in a database (Barrick Column 4 Line 66 through Column 5 Line 12, i.e., ***database server** 112;* Barrick, Column 5 Line 1-10 and Column 10 Line 52-58); and Barrick, Column 4, Line 41-65; Barrick, Column 9 Line 1-10 *Delta Field*, Figure 5: *Delta Field 502,* and Column 7, Line 43 through Column 8 Line 20; Barrick, Column 7, Line 43 through Column 8 Line 20, i.e., ***It should also be noted that in some embodiments, the measurement and reporting functions are placed in a for loop so that the web browser repeatedly accesses a Web page, making repeated measurements and sending multiple reports to the relay server***);

Barrick teaches that the response is sent back from the server to the browser agent, located at the client machine, which calculates the round-trip time based on the request time and arrival time at the browser (Barrick Jr. et al., Column 7 56-66).

Barrick does not explicitly disclose the limitations:

"each deposit an arrival time and a departure time for the first HTML based request (in the one or more hidden data fields associated with the first HTML based request)", "depositing a time of generation of the HTML based response (in one or more hidden data fields) associated with the HTML based response", "(transferring) the arrival times, the time of generation of the HTML based request, and the departure

times to (the one or more hidden data fields) associated with the HTML based response", "the arrival times of the first HTML based request and the HTML based response, the departure times of the first HTML based request and the HTML based response, the time of display for the first HTML based request, and the time of display for the HTML based response (in one or more hidden data fields associated with the second HTML based request)", and "the arrival times of the first HTML based request and the HTML based response, the departure times of the first HTML based request and the HTML based response, the time of display for the first HTML based request, and the time of display for the HTML based response from (the hidden data fields in the HTML based response in a database within a request-response cycle corresponding to the second HTML based request)."

On the other hand, Chen teaches the limitations:

"the arrival times", and "departure time" (Chen, Figure 2 and Column 7 Line 50 through Column 8 Line 54, i.e., *For measurement of packet delay, a switch is required that can measure the difference between* ***the arrival time and the departure time*** *of any packet at that switch, a capability known as "local observability" of packet delay*), and "transferring the arrival times, the time of generation of the (HTML based) request, and the departure times to the one or more hidden data fields associated with the (HTML based) response" (Chen, Column 6 Line 55 through Column 7 Line 5; and Column 8 Line Column 9 Line 14, i.e., *A particular advantage of the node-by-node delay measurement packet is that it allows the computation and relay of instantaneous delay information……. Alternatively,* ***additional time stamps can be used for each node,***

allowing the switch to merely record in one timestamp field the time that the packet arrives, and then record the time the packet leaves into another timestamp field);

Chen teaches a method and system for monitoring of network performance, wherein a special class of packet called *management packet* (Chen, Column 6 Line 55-60) is defined which includes an information field which is modified by all the nodes along a virtual connection (Chen Column 6 Line 55 through Column 7 Line 5; and Column 8 Line Column 9 Line 14, i.e., *A particular advantage of the node-by-node delay measurement packet is that it allows the computation and relay of instantaneous delay information..... Alternatively, additional time stamps can be sued for each node, allowing the switch to merely record in one timestamp field the time that the packet arrives, and then record the time the packet leaves into another timestamp field*). Said management packets are used to collect performance parameters along any virtual connection, including packet delays at each intermediate node where arrival time and departure time at each node are recorded in multiple timestamp fields in the packet, which is used to calculate delay time at each and recorded into the packet (Chen et al., Figure 2 and Column 7 Line 50 through Column 8 Line 54). Chen also teaches the limitation "within a request-response cycle corresponding to the second HTML based request" (Chen, Column 8 Line Column 9 Line 14;)

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the method of Barrick to add the features of depositing an arrival time and a departure time for the request and response packets, transferring the arrival times, the time of generation and the departure times of the request and

response packets, as taught by the method of Chen, so that the resultant method would also comprise the steps of "forwarding the first HTML based request to one or more servers that each deposits an arrival time and a departure time for the first HTML based request in the one or more hidden data fields associated with the first HTML based request", "depositing a time of generation of the HTML based response in one or more hidden data fields associated with the HTML based response", "transferring the arrival times, the time of generation of the HTML based request, and the departure times to the one or more hidden data fields associated with the HTML based response", "forwarding the HTML based response to one or more servers that each deposits an arrival time and a departure time in the one or more hidden data fields associated with the HTML based response", "generating a second HTML based request, the second HTML based request including the times of generation of the first HTML based request and the HTML based response, the arrival times of the first HTML based request and the HTML based response, the departure times of the first HTML based request and the HTML based response, (the time of display for the first HTML based request, and the time of display for the HTML based response) in one or more hidden data fields associated with the second HTML based request", and "storing the time of generation of the first HTML based request and the HTML based response, the arrival times of the first HTML based request and the HTML based response, the departure times of the first HTML based request and the HTML based response, (the time of display for the first HTML based request, and the time of display for the HTML based response) from the hidden data fields in the HTML based response in a database within a request-response cycle

corresponding to the second HTML based request." One would have been motivated to do so in order that *the information field of a management cell is modified by all the network nodes along a virtual connection, not just by the virtual end point*" (Chen et al., Column 6 Line 65 through Column 7 Line 5) so that *monitoring of performance of network connection* can be made (Chen Column 4 Lines 25-32).

Note that the method of Barrick in view of Chen repeats the whole process and generate a second HTML based request OR, on the way a long the chain of nodes, more and more HTML-based requests can be generated which would included times of generation, arrival times, departure times, and time of display for the previously generated HTML request (i.e., first HTML based request) within a request-response cycle corresponding to the second HTML-based request).

Barrick in view of Chen does not explicitly teach the limitation:

On the other hand, Dutta teaches the limitation: "a time of display for the HTML based response" (Dutta, Paragraph 0047, i.e., *the browser maintains a list of all the screen image that have been captured within a configurable duration of time, and the time that the screen image was captured*).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the method of Barrick in view of Chen to add the feature of storing a time of display, as taught by Dutta, to the method taught by Barrick in view of Chenso that the combined method of Barrick in view of Chen and further in view of Dutta teaches the limitations: "generating a second HTML based request, the second HTML based request including the times of generation of the first HTML based

request and the HTML based response, the arrival times of the first HTML based request and the HTML based response, the departure times of the first HTML based request and the HTML based response, the time of display for the first HTML based request, and the time of display for the HTML based response in one or more hidden data fields associated with the second HTML based request", and "storing the time of generation of the first HTML based request and the HTML based response, the arrival times of the first HTML based request and the HTML based response, the departure times of the first HTML based request and the HTML based response, the time of display for the first HTML based request, and the time of display for the HTML based response from the hidden data fields in the HTML based response in a database within a request-response cycle corresponding to the second HTML based request."

One would have been motivated to do so in order because recording of the time of displaying of web pages enables *transitory content that has been dynamically displayed within the browser to be redisplayed to the user at the user's command* (Dutta, Paragraph 0002).

Referring to claim 5, Chen teaches the limitation:

"at least one of the arrival time and the departure time is based on a local time associated with one or more servers" (Chen, Column 7 Line 17-27, i.e., *local measurement of packet delay*).

As per claim 13, Barrick in view of Chen and further in view of Dutta teaches the limitations:

"a browser for generating a first HTML based request including one or more hidden data fields and for displaying an HTML based response including one or more hidden data fields" (Barrick, Column 9 Line 1-10 as applied to claim 1 above; Barrick, Figure 5: *Delta Field 502*);

"at least one first server for receiving the first HTML based request" (Barrick, Column 7 Lines 15-22 and *FIG. 4A* as applied to claim 1 above; Barrick, Figure 4A, Webserver 402), "depositing an arrival time of the first HTML based request into the one or more hidden data fields, and depositing a departure time of the first HTML based request into the one or more hidden data fields of the first HTML based request" (Barrick in vie of Chen as applied to claim 1 above, that is, Barrick, Column 7 Lines 15-22 and *FIG. 4A* and Chen, Figure 2 and Column 7 Line 50 through Column 8 Line 54);

"at least one second server for receiving the first HTML based request and generating an HTML based response" (Barrick, Figure 4A, i.e., Relay Server 406) in response thereto, the at least one second server operable to transfer the arrival times and departure times of the first HTML based request into the one or more hidden data fields of the HTML based response, and deposit a time of arrival of the first HTML based request and the departure time of the HTML based response into the one or more hidden data fields of the HTML based response" (Barrick in view of Chen, that is, Barrick, Column 7 Lines 15-22 and *FIG. 4A* and Chen, Figure 2 and Column 7 Line 50 through Column 8 Line 54, Chen, Column 6 Line 55 through Column 7 Line 5; and

Column 8 Line Column 9 Line 14, and Chen et al., Figure 2 and Column 7 Line 50 through Column 8 Line 54);

"at least one third server for receiving the HTML based response" (Chen Figure 2, either NODE1 or NODE2 or NODE3 could be the third server in the method of Barrick in view of Chen), "depositing an arrival time of the HTML based response into the one or more hidden data fields, and depositing a departure time of the HTML based response into the one or more hidden data fields of the HTML based response" (Barrick in view of Chen, that is, Barrick, Column 7 Lines 15-22 and *FIG. 4A* and Chen, Figure 2 and Column 7 Line 50 through Column 8 Line 54, Chen, Column 6 Line 55 through Column 7 Line 5; and Column 8 Line Column 9 Line 14, and Chen et al., Figure 2 and Column 7 Line 50 through Column 8 Line 54);

"wherein the browser is further operable to store a time of arrival and a time of display for the HTML based response" (Chen, Figure 2 and Column 7 Line 50 through Column 8 Line 54, Chen, Column 6 Line 55 through Column 7 Line 5 and Dutta Paragraph 0047), and "generate a second HTML based request including the times of generation of the first HTML based request and the HTML based response, the arrival times of the first HTML based request and the HTML based response, the departure times of the first HTML based request and the HTML based response, ang the time of display for the first HTML based request~ and the time of display for the HTML based response in one or more hidden data fields associated with the second HTML based request" (Barrick in view of Chen as applied to claim 1 above; particular note Barrick, Column 7, Line 43 through Column 8 Line 20, i.e., ***It should also be noted that in***

some embodiments, the measurement and reporting functions are placed in a for loop so that the web browser repeatedly accesses a Web page, making repeated measurements and sending multiple reports to the relay server);

"wherein one of the at least one second server is operable to perform analysis on the times of generation, arrival times, departure times, and time of display to determine a time of delay at each server and at the browser for the first HTML based request and the HTML based response, the at least one second server further including at least one of an application server and a database server" (Barrick in view of Chen, Figure 2 and Column 7 Line 50 through Column 8 Line 54, Chen, Column 6 Line 55 through Column 7 Line 5); and

"a database for storing the times of generation of the first HTML based request and the HTML based response, the arrival times of the first HTML based request and the HTML based response, the departure times of the first HTML based request and the HTML based response, ang the time of display of the first HTML based request, and the time of display for the HTML based response within a request-response cycle corresponding to the second HTML based request" (Barrick in view of Chen and further in view of Dutta as applied to claim 1 above).

Referring to claim 18, Barrick is directed to the limitation:

"at least one first server is a web server" (Column 4 Line 58-60 , i.e., *web server 104,* and Figure 1C: *web server 104*).

12. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barrick in view of Chen and further in view of Dutta and further in view of Fish et al. (hereinafter "Fish", U.S. Patent Application Publication Number 2004/0111394).

Referring to claim 2, Barrick in view of Chen does not explicitly disclose the limitation:

"displaying the one or more hidden data fields to a user".

Fish teaches the limitation:

"displaying the one or more hidden data fields to a user" (Paragraph 0023, 034, and 0038-0039). Fish teaches a method for writing debug data into hidden fields of HTML or XML document, which hidden until the user makes said hidden fields visible to be displayed (Paragraph 0023, 034, and 0038-0039).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to add the feature of displaying hidden data fields as taught by Fish et al. to the system and method taught by Barrick Jr. et al. in view of Chen et al. as applied to claim 1 above so that, the method of claim 1 would further comprise displaying the one or more hidden data fields to a user. One would have been motivated to do so in order to simply allow the user analyze the hidden data instantly rather than storing the hidden data in a database.

13. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barrick in view of Chen and further in view of Dutta and further in view of Packman et al., (hereinafter "Packman", U.S. Patent Application Publication Number 2003/0225877).

As per claim 4, Barrick in view of Chen and further in view of Dutta teaches the limitations: "performing analysis on the times of generation, arrival times, departure times, and time of display in the database to determine a time of delay at each server and at the browser for the first HTML based request and the HTML based response" (Barrick, Column 10 Lines 55-61; Barrick, Column 5 Line 1-10 and Column 10 Line 52-58; Barrick, Column 4, Line 41-65; Barrick, Column 9 Line 1-10 *Delta Field*, Figure 5: *Delta Field 502,* and Column 7, Line 43 through Column 8 Line 20; Chen, Column 8 Line Column 9 Line 14; and Dutta, Paragraph 0047).

Barrick in view of Chen and further in view of Dutta does not explicitly teach the limitation: "the one or more servers including at least one application server and a database server".

Packman teaches the limitation:

"the one or more servers including at least one application server and a database server"(Paragraph 0032, i.e., *application servers 340 and/or database servers*).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to add the feature of measuring performance of application servers and/or database servers, as taught by Packman, to the method and system of Barrick in view of Chen and further of Dutta so that the resultant method would comprise one or more servers which are application servers and database servers. One

would have been motivated to do so because measuring performance of application servers and database servers are notoriously well known in the art (Packman Paragraphs 0004-0005).

14. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barrick in view of Chen and further in view of Engel (hereinafter "Engel") (U.S. Patent Application Publication Number 2004/0246996).

Referring to claim 6, Barrick in view of Chen does not explicitly recite the limitation:

"wherein the local time of at least one of the one or more servers is synchronized with at least one other of the one or more servers".

Engel teaches the limitation:

"wherein the local time of at least one of the one or more servers is synchronized with at least one other of the one or more servers" (Paragraph 0017). Engel teaches a method for time synchronization across communication devices wherein local time of one or more nodes is synchronized by exchanging timing packets (Engel Paragraph 0017).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to add the feature of synchronizing local time among nodes as taught by Engel to the system and method taught by Barrick Jr. et al. in view of Chen et al. as applied to claim 5 so that, in the resultant system and method, local time of at

least one of the one or more servers will be synchronized with at least one other of the one or more servers. One would have been motivated to do so in order to determine delay time between nodes (Engel Paragraph 0003).

15. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barrick in view of Chen and further in view of Dutta and further in view of Struble (U.S. Patent Application Publication Number 2003/0004796).

As per claim 16, Barrick in view of Chan and further in view of Dutta as applied to claim 1 does not explicitly teach the limitation: "further comprising an internal clock associated with the at least one first server for keeping local time".

However, Struble teaches the limitation "further comprising an internal clock associated with the at least one first server for keeping local time" (Paragraph 0023, i.e., *The internal clock 216 is configured to maintain current local time).*

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to add the feature of using an internal clock to keep local time, as taught by Struble, to the method and system of Barrick in view of Chan and further in view of Dutta so that the resultant method would comprise an internal clock which is associated with at least one server for keeping local time. One would have been motivated to do so in order to have two computers work *relative to current conditions and relative to the current time* (Struble, Paragraph 0023).

As per claim 17, Barrick in view of Chen and further in view of Dutta and further in view of Struble teaches the limitation:

"further comprising an internal clock associated with the at least one second for keeping local time" (Struble, Paragraph 0023, i.e., *The internal clock 216 is configured to maintain current local time*).

16. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barrick in view of Chen and further in view of Blythe et al. (hereinafter "Blythe") (U.S. Patent Application Publication Number 2004/0139433).

Referring to claim 19, Barrick in view of Chen does not explicitly teach the limitation:

"at least one second server is an application server".

Blythe teaches the limitation:

"at least one second server is an application server" (Paragraph 0036 and 0054). Blythe et al. teaches the use of application servers in distributed environment (Blythe et al., Paragraph 0036 and 0054).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to add the use of application servers to the method and system of Barrick Jr. et al. in view of Chen et al. as applied to claim 13 so that said system and method would comprise at least one second server which is an application server. One would have been motivated to do so in order to simply measure performance metrics of such servers.

Response to Arguments

17. The applicant's arguments filed on December 21, 2007, have been fully considered but are not persuasive.

Referring to the amendment made to claim, 1 and 13 Applicant argued that *Claim 1 is allowable as Barrick, Chen, and Dutta either alone or in any combination, do not teach or suggest each and every element of amended claim 1. For example, claim 1 recites in part: A method for assembling timing data for each layer in a multi-layer server environment, comprising: generating a second HTML based request, the second HTML based request including the times of generation of the first HTML based request and the HTML based response, the arrival times of the first HTML based request and the HTML based response, the departure times of the first HTML based request and the HTML based response, the time of display for the first HTML based request, and the time of display for the HTML based response in one or more hidden data fields associated with the second HTML based request; and storing the times of generation of the first HTML based request and the HTML based response, the arrival times of the first HTML based request and the HTML based response, the departure times of the first HTML based request and the HTML based response, the time of display for the first HTML based request, and the time of display for the HTML based response from the hidden data fields in the HTML based response in a database within a request-response cycle corresponding to the second HTML based request. (emphasis added)* (Applicant's Argument, Page 6 Las Paragraph through page 7 first paragraph).

Examiner respectfully disagrees all of the allegations as argued. Examiner, in his previous office action, gave detail explanation of claimed limitation and pointed out exact locations in the cited prior art. Examiner is entitled to give claim limitations their broadest reasonable interpretation in light of the specification. See MPEP 2111 [R-1] Interpretation of Claims-Broadest Reasonable Interpretation.

During patent examination, the pending claims must be 'given the broadest reasonable interpretation consistent with the specification.' Applicant always has the opportunity to amend the claims during prosecution and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 162 USPQ 541,550-51 (CCPA 1969).

In response it is pointed out that Barrick in view of Chen and further in view of Dutta teaches said limitations as follows: "generating a second HTML based request" (Barrick, Column 7, Line 43 through Column 8 Line 20, i.e., *It should also be noted that in some embodiments, the measurement and reporting functions are placed **in a for loop** so that the web browser **repeatedly accesses a Web page**, making repeated measurements and sending multiple reports to the relay server)* "the second HTML based request including times of generation of the first HTML based request and the HTML based response" (Barrick, Column 9 Line 1-10 i.e., *FIG. 5 is a diagram of the fields contained in an **HTTP GET request** header that has been altered to transfer download timing information to a relay server. The download time interval measured by the browser agent is encoded as a DELTA field 502. In one embodiment, the **DELTA field** is an integer representing a number of milliseconds. The delta field is sent as a*

variable DELTA in the HTTP GET request header. Next, a group,of fields are defined that make up a page station identifier (PSI) 503; Barrick Figure 5: *Delta Field 502,* and Barrick, Column 7, Line 43 through Column 8 Line 20, i.e., *In one embodiment,* ***the browser agent records the time of the sending of the HTTP GET request as the start time****. Upon receiving the HTTP GET request,* ***Web server 402 sends back the requested Web page in a step 440***) "in one or more hidden data fields associated with the second HTML based request" (Barrick, Column 9 Line 1-10 i.e., *FIG. 5 is a diagram of the fields contained in an* ***HTTP GET request*** *header that has been altered to transfer download timing information to a relay server. The download time interval measured by the browser agent is encoded as a* ***DELTA field 502****. In one embodiment, the* ***DELTA field*** *is an integer representing a number of milliseconds.*) "*the arrival times of the first HTML based request and the HTML based response, the departure times of the first HTML based request and the HTML based response, the time of display for the first HTML based request"* (Chen, Figure 2 and Column 7 Line 50 through Column 8 Line 54, i.e., *For measurement of packet delay, a switch is required that can measure the difference between* ***the arrival time and the departure time*** *of any packet at that switch, a capability known as "local observability" of packet delay*), and "transferring the arrival times, the time of generation of the (HTML based) request, and the departure times to the one or more hidden data fields associated with the (HTML based) response" (Chen, Column 6 Line 55 through Column 7 Line 5; and Column 8 Line Column 9 Line 14, i.e., *A particular advantage of the node-by-node delay measurement packet is that it allows the computation and relay of instantaneous delay*

information……. Alternatively, ***additional time stamps can be used for each node,*** *allowing the switch to merely record in one timestamp field the time that the packet arrives, and then record the time the packet leaves into another timestamp field*), *and "the time of display for the HTML based response"* (Dutta, Paragraph 0047) *"in one or more hidden data fields associated with the second HTML based request"* (Barrick, Column 9 Line 1-10 i.e., *FIG. 5 is a diagram of the fields contained in an* ***HTTP GET request*** *header that has been altered to transfer download timing information to a relay server. The download time interval measured by the browser agent is encoded as a DELTA field 502. In one embodiment, the* ***DELTA field*** *is an integer representing a number of milliseconds. The delta field is sent as a variable DELTA in the HTTP GET request header. Next, a group,of fields are defined that make up a page station identifier (PSI) 503;* Barrick Figure 5: *Delta Field 502*) ; and "*storing the times of generation of the first HTML based request and the HTML based response" (*Barrick repeatedly teaches storing request-response results in his specification. In Column 1 Lines 35-44, Barrick recites *a network of special machines that are programmed to connect to different web sites as clients and* ***evaluate the performance of the connection****. The special machines that make up the network can then* ***store or report their connection results****;* Barrick Column 2 Lines 10-18, i.e., *The data is sent from the user to a relay server that preferably combines the performance data with geographical information relating to the user.* ***The data can then be combined with data obtained from other users and stored in a central database for processing****;* Barrick Column 11 Lines 1-6, i.e., *Download time, or any other performance parameter that is desired may be*

measured using an agent that monitors information as it is transmitted between parties. In one embodiment, the network is the Internet and the information is transmitted in the form of Web pages. Results are preferably sent to a relay server for formatting before being stored in a database server. In some embodiments, results are sent directly to a database server; also note Column 5 Line 1-10 and Column 10 Line 52-58 of Barrick reference; in addition, Barrick teaches the storing of the arrival times and departure times in the hidden data fields in the second HTML based response in a database (Barrick Column 4 Line 66 through Column 5 Line 12, i.e., ***database server*** *112;* Barrick, Column 5 Line 1-10 and Column 10 Line 52-58); and Barrick, Column 4, Line 41-65; Barrick, Column 9 Line 1-10 *Delta Field*, Figure 5: *Delta Field 502,* and Column 7, Line 43 through Column 8 Line 20; Barrick, Column 7, Line 43 through Column 8 Line 20, i.e., ***It should also be noted that in some embodiments, the measurement and reporting functions are placed in a for loop so that the web browser repeatedly accesses a Web page, making repeated measurements and sending multiple reports to the relay server*** *), "the arrival times of the first HTML based request and the HTML based response, the departure times of the first HTML based request and the HTML based response" (*Chen, Column 6 Line 55 through Column 7 Line 5; and Column 8 Line Column 9 Line 14, i.e., *A particular advantage of the node-by-node delay measurement packet is that it allows the computation and relay of instantaneous delay information……. Alternatively,* ***additional time stamps can be used for each node,*** *allowing the switch to merely record in one timestamp field the time that the packet arrives, and then record the time the packet leaves into another timestamp field*), *"the*

time of display for the first HTML based request and the time of display for the HTML based response" (Dutta, Paragraph 0047*), " from the hidden data fields in the HTML based response"* (Barrick Figure 5: *Delta Field 502)" in a database"* (Barrick repeatedly teaches storing request-response results in his specification. In Column 1 Lines 35-44, Barrick recites *a network of special machines that are programmed to connect to different web sites as clients and* ***evaluate the performance of the connection****. The special machines that make up the network can then* ***store or report their connection results****;* Barrick Column 2 Lines 10-18, i.e.*, The data is sent from the user to a relay server that preferably combines the performance data with geographical information relating to the user.* ***The data can then be combined with data obtained from other users and stored in a central database for processing****;* Barrick Column 11 Lines 1-6, i.e., *Download time, or any other performance parameter that is desired may be measured using an agent that monitors information as it is transmitted between parties. In one embodiment, the network is the Internet and the information is transmitted in the form of Web pages. Results are preferably sent to a relay server for formatting before being stored in a database server. In some embodiments, results are sent directly to a database server;* also note Column 5 Line 1-10 and Column 10 Line 52-58 of Barrick reference; in addition, Barrick teaches the storing of the arrival times and departure times in the hidden data fields in the second HTML based response in a database (Barrick Column 4 Line 66 through Column 5 Line 12, i.e., ***database server*** *112;* Barrick, Column 5 Line 1-10 and Column 10 Line 52-58); and Barrick, Column 4, Line 41-65; Barrick, Column 9 Line 1-10 *Delta Field*, Figure 5: *Delta Field 502,* and Column

7, Line 43 through Column 8 Line 20) *"within a request-response cycle corresponding to the second HTML based request* (Barrick, Column 7, Line 43 through Column 8 Line 20, i.e., ***It should also be noted that in some embodiments, the measurement and reporting functions are placed in a for loop so that the web browser repeatedly accesses a Web page, making repeated measurements and sending multiple reports to the relay server***)".

Applicant also argued that "the combination of Barrick, Chen, Dutta, and the process of repeating in a loop does not teach "the second HTML based request including the times of generation of the first HTML based request and the HTML based response, the arrival times of the first HTML based request and the HTML based response" (Applicant's argument Page 7 last paragraph through page 8 first paragraph).

In response, it is pointed out that the method of Barrick in view of Chen repeats the whole process and generate a second HTML based request OR, on the way a long the chain of nodes, more and more HTML-based requests can be generated which would included times of generation, arrival times, departure times, and time of display for the previously generated HTML request (i.e., first HTML based request) within a request-response cycle corresponding to the second HTML-based request). Particularly note Barrick, Column 7, Line 43 through Column 8 Line 20, which recites ***It should also be noted that in some embodiments, the measurement and reporting functions are placed in a for loop so that the web browser repeatedly accesses a Web page, making repeated measurements and sending multiple reports to the relay server***).

Applicant also argued that *there is no suggestion or motivation of the management packet keeping track of time of generation of the first HTML based request and the HTML based response..... as recited in claim 1* (Applicant's argument, page 8 second paragraph).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one would have been motivated to do so in order that *the information field of a management cell is modified by all the network nodes along a virtual connection, not just by the virtual end point*" (Chen et al., Column 6 Line 65 through Column 7 Line 5) so that *monitoring of performance of network connection* can be conducted (Chen Column 4 Lines 25-32). Applicant also argued that *It should be noted that a time of capture of a screen shot is not the same as a time of display for the HTML based response. There is no indication that the time of screen shot capture occurs instantaneously with the time of display* (Applicant's argument, page 9 first paragraph).

In response, it is pointed out that Dutta in paragraph 0042 that the time of capture of a web page is the same as the display time of said web page (Dutta Paragraph 0042, i.e., *In order to assist the user in being able to view at a later time*

transient content contained in a multimedia object, whether it is embedded within a Web page and referenced through an URL or received via push or pull techniques from a server, a preferred embodiment of the system, method, and program of the present invention enables a Web browser to capture screen images, at a configurable time interval, of the displayed documents and/or any embedded multimedia objects. These captured screen images are stored in a chronological list, and can be later rendered to the screen in succession at a rate determined by a user).

Applicant also argued that *Barrick, Chen, Dutta, and the process of repeating in a loop also does not teach "storing" in the manner recited in claim 1. Although the relay server of Barrick transfers the timing information sent by the browser, there is no mention of storing in a database within a request-response cycle corresponding to the second HTML based request, as is claimed by Applicants* (Applicant's argument page 9 third paragraph).

In response, it is pointed out that Barrick in view of Chen and further in view of Dutta teaches "storing" (Barrick repeatedly teaches storing request-response results in his specification. In Column 1 Lines 35-44, Barrick recites *a network of special machines that are programmed to connect to different web sites as clients and* ***evaluate the performance of the connection****. The special machines that make up the network can then* ***store or report their connection results****;* Barrick Column 2 Lines 10-18, i.e., *The data is sent from the user to a relay server that preferably combines the performance data with geographical information relating to the user.* ***The data can then be combined with data obtained from other users and stored in a central***

database for processing; Barrick Column 11 Lines 1-6, i.e., *Download time, or any other performance parameter that is desired may be measured using an agent that monitors information as it is transmitted between parties. In one embodiment, the network is the Internet and the information is transmitted in the form of Web pages. Results are preferably sent to a relay server for formatting before being stored in a database server. In some embodiments, results are sent directly to a database server;* also note Column 5 Line 1-10 and Column 10 Line 52-58 of Barrick reference; in addition, Barrick teaches the storing of the arrival times and departure times in the hidden data fields in the second HTML based response in a database (Barrick Column 4 Line 66 through Column 5 Line 12, i.e., ***database server 112;*** Barrick, Column 5 Line 1-10 and Column 10 Line 52-58); and Barrick, Column 4, Line 41-65; Barrick, Column 9 Line 1-10 *Delta Field*, Figure 5: *Delta Field 502,* and Column 7, Line 43 through Column 8 Line 20;) "*within a request-response cycle corresponding to the second HTML based request"* (Barrick, Column 7, Line 43 through Column 8 Line 20, which recites ***It should also be noted that in some embodiments, the measurement and reporting functions are placed in a for loop so that the web browser repeatedly accesses a Web page, making repeated measurements and sending multiple reports to the relay server***).

Referring to claim 2, Applicant argued that *Fish does not make up for the deficiencies in Barrick, Chan, and Dutta with respect to these claims* (Applicant's argument, page 10 sixth paragraph), referring to dependency of claim 2 from claim 1.

As discussed above, Barrick in view of Chen and further in view of Dutta all the limitations of claim 1 and, as such, said argument is moot.

Referring to claim 4, Applicant argued that *Packman does not make up for the deficiencies in Barrick, Chan, and Dutta with respect to these claims* (Applicant's argument, page 11 third paragraph), referring to dependency of claim 4 from claim 1. As discussed above, Barrick in view of Chen and further in view of Dutta all the limitations of claim 1 and, as such, said argument is moot.

Referring to claim 6, Applicant argued that *Engel does not make up for the deficiencies in Barrick, Chan, and Dutta with respect to these claims* (Applicant's argument, page 11 fifth paragraph), referring to dependency of claim 6 from claim 1. As discussed above, Barrick in view of Chen and further in view of Dutta all the limitations of claim 1 and, as such, said argument is moot.

Referring to claim 19, Applicant argued that *Blythe does not make up for the deficiencies in Barrick, Chan, and Dutta with respect to these claims* (Applicant's argument, page 12 second paragraph), referring to dependency of claim 19 from claim 13. As discussed above, Barrick in view of Chen and further in view of Dutta all the limitations of claim 13 and, as such, said argument is moot.

Referring to claim 16 and 17, Applicant argued that *Struble does not make up for the deficiencies in Barrick, Chan, and Dutta with respect to these claims* (Applicant's argument, page 12 fifth paragraph), referring to dependency of claim 16 and 17 from

claim 13. As discussed above, Barrick in view of Chen and further in view of Dutta all the limitations of claim 13 and, as such, said argument is moot.

In view of the above, the examiner contends that all limitations as recited in the claims have been addressed in this Action. For the above reasons, Examiner believed that rejections of the last office action and current office action are proper.

Conclusion

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact Information

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Myint whose telephone number is (571) 272-5629. The examiner can normally be reached on 8:30AM-5:30PM Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Breene can be reached on (571) 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-5629.

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